

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

BRAJA SMITH,

Plaintiff,

v.

FYE, et al.,

Defendant.

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Civil Action

No. 5:17-cv-406 (CAR) (MSH)

**ORDER ON ORDER AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Currently before the Court is the Order and Recommendation of the United States Magistrate Judge [Doc. 6] to dismiss without prejudice Plaintiff's Eighth Amendment claims against Defendants Burkes and Perofsky pursuant to 28 U.S.C. §§1915A(a), and to allow Plaintiff's Eighth Amendment claims against all other defendants to go forward. The Recommendation further recommends Plaintiff's Motion for Preliminary Injunction be denied. Plaintiff has filed an Objection to the Recommendation [Doc.10]. This Court has fully considered the record in this case and made a *de novo* determination of the portions of the Recommendation to which Petitioner objects. For the reasons that follow, the Order and Recommendation [Doc. 6] is **ADOPTED**.

In his Objection, Plaintiff corrects a typographical error in the Order and Recommendation,¹ and he expresses his concern that the Order and Recommendation makes no mention of delayed medical treatment which “is the import[ant] point of the entire claim.”² Delayed medical care is one way to show deliberate indifference,³ and since Plaintiff’s allegations state Eighth Amendment deliberate indifference claims against all Defendants except Perofsky and Burkes, Plaintiff’s factual allegations regarding delayed medical treatment will be considered.

Therefore, the Magistrate Judge’s Order and Recommendation [Doc. 6] is **HEREBY ADOPTED AND MADE THE ORDER OF THE COURT**. Plaintiff’s Motion for Preliminary Injunction [Doc. 3] is **DENIED**. Plaintiff’s Eighth Amendment claims against Defendants Fye, Spikes, McLaughlin, Kegler, Searcy, Jackson, Shirah, Ranson, Hamilton, Mims, Fowlkes, Johnson, Miller, and Toby **may go forward**; and Plaintiff’s Eighth Amendment claims against Defendants Perofsky and Burkes are **DISMISSED WITHOUT PREJUDICE**.

¹ Plaintiff objects he was discharged from Spalding Regional Medical Center after seven days not eleven as stated in the Order and Recommendation. Pl.’s Objection to the Order and Recommendation, [Doc. 10] at p. 1.

² *Id.*

³ *Magwood v. Sec’y, Fla. Dep’t of Corr.*, 652 F. App’x 841, 844 (11th Cir. 2016), *cert. denied sub nom. Magwood v. Jones*, 137 S. Ct. 675, 196 L. Ed. 2d 560 (2017) (finding “(1) knowledge of a serious medical need and a failure or refusal to provide care; (2) delaying treatment for non-medical reasons; (3) grossly inadequate care; (4) a decision to take an easier but less efficacious course of treatment; or (5) medical care that is so cursory as to amount to no treatment at all” may constitute deliberate indifference).

SO ORDERED, this 21st day of March, 2018.

S/ C. Ashley Royal

C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT